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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,149	02/08/2001	David Charles Lyons	12929.1062US01	7449
23552	7590	08/24/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			COCKS, JOSIAH C	
			ART UNIT	PAPER NUMBER

3749

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/781,149

Applicant(s)

LYONS ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on RCE filed 5/26/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6 and 9-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3, 5, 6, 9, 19 and 20 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 10-18, 21, 22, 25 and 26 is/are rejected.
- 7) ☒ Claim(s) 23 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 05/26/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/26/2004 has been entered.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 5/26/2004 has been considered by the examiner. An initialed and signed copy of the form PTO-1449 is included with this Office Action.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the

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various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 2, 10-18, 21, 22, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,941,237 to Shimek ("*Shimek '237*") (prior art of record) ("*Shimek '237*") in view of US Pat. No. 6,361,725 to Sinsley ("*Sinsley '725*") (prior art of record).

*Shimek '237* discloses the invention substantially as described in applicant's claims 1, 2, 10-18, 21, 22, and 25-26. In particular, *Shimek '237* shows in Figs. 15-18 a gas burner for a gas fireplace, comprising:

a burner panel (14) defining a top surface and a bottom surface;

a bottom member (17) coupled to the burner panel (14);

wherein the burner panel (14) defines at least one aperture (20, 48, 63) to provide a gas/air mixture to the top surface of the burner panel (14); and

wherein the burner panel (14) comprises a molded material (see col. 2, lines 11-19); and

wherein the burner panel (14) comprises a bottom panel of a combustion chamber enclosure (see Fig. 12).

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*Shimek* '237 does not disclose the use of a compression molding method to make the burner panel.

*Sinsley* '725 teaches the use of a compression injection method for ceramic-fiber artificial logs or panels used in gas fireplaces (see col. 1, lines 55-62). This injection method is termed "pressure injection" and "pressure collation" (see col. 4, lines 47-56) and involves the application of the mold slurry under a positive pressure (see col. 3, lines 25-29), which is regarded by the examiner as placing the molded material in compressions.

Therefore, in regard to claims 1, 2, 10-18, 21, 22, and 25-26, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify burner panel material of *Shimek* '237 to be formed by the compression injection molding method of *Sinsley* '725 as this method provides burner panels that have a lower moisture content which reduces the primary oven drying cycle (see *Sinsley* '725, col. 4, lines 47-52) and provides a much finer texture detail to finished surface than traditional vacuum molding processes (see *Sinsley* '725, col. 4, lines 52-56).

6. Claims 1, 2, 10-18, 21, 22, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,941,237 to Shimek ("*Shimek* '237") (prior art of record) in view of US Pat. No. 3,758,317 to Moore ("*Moore*").

*Shimek* '237 discloses the invention substantially as described in applicant's claims 1, 2, 10-18, 21, 22, and 25-26. In particular, *Shimek* '237 shows in Figs. 15-18 a gas burner for a gas fireplace, comprising:

a burner panel (14) defining a top surface and a bottom surface;

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a bottom member (17) coupled to the burner panel (14);  
wherein the burner panel (14) defines at least one aperture (20, 48, 63) to provide a gas/air mixture to the top surface of the burner panel (14); and  
wherein the burner panel (14) comprises a molded material (see col. 2, lines 11-19); and  
wherein the burner panel (14) comprises a bottom panel of a combustion chamber enclosure (see Fig. 12).

*Shimek '237* does not disclose the use of a compression molding method to make the burner panel.

*Moore* teaches a ceramic shaped refractory for use in household burners and method of forming the refractory (see col. 8, lines 32-35 and 61-69) where compression molding is described as a "useful technique" for forming the panels and is described as being equivalent to vacuum and pressure forming methods (see col. 8, lines 45-48).

Therefore, in regard to claims 1, 2, 10-18, 21, 22, and 25-26, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner panel and method of forming of *Shimek '237* to incorporate the compression molding method as taught in *Moore* as this molding method is desirably recognized as a useful technique for forming shaped ceramic parts for household burners and is considered equivalent to vacuum and pressure forming methods (see *Moore*, col. 8, lines 32-69).

***Allowable Subject Matter***

7. Claims 3, 5, 6, 9, 19, and 20 are allowed.

8. Claims 23 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. The rejection of claims 1, 2, 21, 22, 25, and 26 on the basis of *Atemboski et al.* (US # 6,443,726) as the primary reference is hereby withdrawn. However, as noted in paragraphs 5 and 6 above, claims 1, 2, 10-18, 21, 22, 25, and 26 now stand rejected on the basis of *Shimek* '237 in view of *Sinsley* '725 and in the alternative on the basis of *Shimek* '237 in view of *Moore*.

10. The Supplemental Declaration of David Lyons executed May 10, 2004 and filed 5/26/2004 is insufficient to overcome the prior rejection of claims 10-18 based upon *Shimek* '237 in view of *Sinsley* '725 or the current rejections of claims 1, 2, 21, 22, 25, and 26 as now also rejected on the basis of *Shimek* '237 in view of *Sinsley* '725 because this declaration merely provides evidence as to material differences between products formed by compressions molding versus traditional vacuum molding. *Sinsley* '725 is applied to show a pressure injection molding process, which is distinguished from traditional vacuum molding (see *Sinsley* '725, col. 4, lines 52-56), and places a mold under compression. This reference is asserted by the examiner to disclose a forming a burner panel of compression molded material as recited in applicant's claims. As far as is

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proper, *Sinsley* '725 is not considered to show a vacuum molding method as distinguished in the Supplemental Declaration.

***Conclusion***

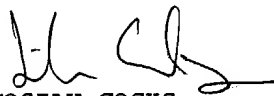
11. This action is made non-final. A THREE month shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) months from the mailing date of this communication.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
August 19, 2004

  
JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749